

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 3373



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION COMMISSION  
SECRETARIAT

2018 JUN 11 PM 2:37

**SENSITIVE**

June 11, 2018

**MEMORANDUM**

TO: The Commission

THROUGH: Alec Palmer *AP*  
Staff Director

FROM: Patricia C. Orrock *DC* for PCO  
Chief Compliance Officer

Debbie Chacona *DC*  
Assistant Staff Director  
Reports Analysis Division

BY: Kristin D. Roser/ Aimee Wechsler *KDR AW*  
Compliance Branch

SUBJECT: Reason to Believe Recommendation -  
Failure to File 48-Hour Notices under the Administrative Fine Program

Attached is the name of a principal campaign committee that has failed to file 48-hour notices with the Commission for contributions of \$1,000.00 or more received (1) from the close of books for the 2014 12 Day Pre-Primary Report up to 48 hours before the August 26, 2014 Arizona Primary Election, and (2) from the close of books for the 2014 12 Day Pre-General Report up to 48 hours before the November 4, 2014 General Election in accordance with 52 U.S.C. § 30104(a) and 11 CFR. § 104.5(f). The committee, McSally for Congress, represents a candidate who won the 2014 General Election. The committee is being referred for failing to file 48-hour notices for contributions totaling \$54,300<sup>1</sup>.

A 48-hour notice is required to report all contributions of a \$1,000.00 or more, to any authorized committee of a candidate, including contributions from the candidate, loans from the candidate and other non-bank sources and endorsements or guarantees of loans from banks, as per 11 CFR § 104.5(f).

<sup>1</sup> Please note, the Final Audit Report dated May 2, 2018 cited \$99,853 in contributions for which 48-hour notices were not filed or not filed timely. Upon further review, RAD and Audit determined the Committee failed to timely file 48-hour notices for contributions totaling \$54,300.

**100-9678**

[illegible]

**100-9678**

- [illegible]

[illegible]

**Contributions for Which a 48-Hour Notice Was Not Timely Received**

AF 3373

Committee ID: C00512236

Committee Name: McSally for Congress

Report Types: October Quarterly Report (8/7/2014 – 9/30/2014)

30-Day Post-General Report (10/16/2014 – 11/24/2014)

Primary 48-Hour Reporting Period: 8/7/2014 – 8/23/2014

General 48-Hour Reporting Period: 10/16/2014 – 11/1/2014

CONTRIBUTOR	DATE <sup>2</sup>	AMOUNT	REPORTING PERIOD
LARRY TAYLOR	8/7/2014	\$1,000.00	PRIMARY
ELEANOR FOX-	8/7/2014	\$2,600.00	PRIMARY
GORDON AUSTIN-	8/7/2014	\$1,500.00	PRIMARY
BOB LEE-	8/14/2014	\$1,000.00	PRIMARY
LESTER STRONG-	8/14/2014	\$1,000.00	PRIMARY
NINA WADSWORTH-	8/14/2014	\$2,600.00	PRIMARY
PEABODY PAC	8/15/2014	\$2,500.00	PRIMARY
JAMES DRETLE-	8/17/2014	\$1,000.00	PRIMARY
GEORGE ANDERSON-	10/23/2014	\$1,000.00	GENERAL
TOM RICE FOR CONGRESS -	10/27/2014	\$2,000.00	GENERAL
HAE PARK-	10/29/2014	\$2,600.00	GENERAL
SHARON CHENEVERT	10/30/2014	\$2,000.00	GENERAL
CHERYL ELLEGARD	10/30/2014	\$2,600.00	GENERAL
HEATHER VOLPE	10/30/2014	\$1,300.00	GENERAL
IVAN KASSER	10/30/2014	\$1,600.00	GENERAL
TODD PIERCE	10/30/2014	\$2,600.00	GENERAL
TIFFANI SPROUL	10/30/2014	\$1,300.00	GENERAL
KENNETH ELLEGARD	10/30/2014	\$2,600.00	GENERAL
ROBERT TUTTLE	10/30/2014	\$2,600.00	GENERAL
MIKE GOODMAN	10/30/2014	\$2,600.00	GENERAL
JON VOLPE	10/30/2014	\$1,300.00	GENERAL
GORDON REAY	10/30/2014	\$1,000.00	GENERAL
CHRISTINE TORETTI	10/30/2014	\$2,600.00	GENERAL
WILLIAM ASSENMACHER	10/30/2014	\$2,600.00	GENERAL

<sup>2</sup> The dates listed in the chart reflect the date of receipt discovered during the audit fieldwork (Audit case 2-748).



NOTIFICATION

6/5/2018 3:05 PM

Federal Election Commission  
Reason to Believe Circulation Report  
48-Hour Notification Report

AF#	Committee ID	Committee Name	State	Election	Candidate Name	Treasurer	Prev Violations	Notices Not Filed	LOA	Penalty
3373	C00512236	MCSALLY FOR CONGRESS	AZ	2014	MARTHA MCSALLY	PAUL KILGORE	0	6	\$54,300	\$6,282

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) AF 3373  
Reason to Believe Recommendation - )  
Failure to File 48-Hour Notices under the )  
Administrative Fine Program )

CERTIFICATION

I, Dayna C. Brown, Secretary and Clerk of the Federal Election  
Commission, do hereby certify that on June 18, 2018, the Commission decided  
by a vote of 4-0 to take the following actions in AF 3373:

1. Find reason to believe that McSally for Congress and Paul Kilgore, in his official capacity as treasurer, violated 52 U.S.C. § 30104(a) and make a preliminary determination that a civil money penalty of \$6,282 be assessed.
2. Send the appropriate letter.

Commissioners Hunter, Petersen, Walther, and Weintraub voted  
affirmatively for the decision.

Attest:

June 18, 2018  
Date

Dayna C. Brown  
Dayna C. Brown  
Secretary and Clerk of the Commission



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 18, 2018

Paul Kilgore, in official capacity as Treasurer  
McSally for Congress  
PO Box 19128  
Tucson, AZ 85731

C00512236  
AF#: 3373

Dear Mr. Kilgore:

The Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101, *et seq.* ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate or the Federal Election Commission ("FEC"), and the Secretary of State, as appropriate, of any contribution of \$1,000 or more, received by any authorized committee of the candidate after the 20th day, but more than 48 hours before, any election. 52 U.S.C. § 30104(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. *Id.* These notification requirements are in addition to all other reporting requirements. 52 U.S.C. § 30104(a). Our records indicate that McSally for Congress did not submit 48-Hour Notices for contributions of \$1,000 or more, received between August 7, 2014 and August 23, 2014 and between October 16, 2014 and November 1, 2014, totaling \$54,300, as required by 52 U.S.C. § 30104(a)(6)(A). Attachment 1.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 52 U.S.C. § 30104(a). 52 U.S.C. § 30109(a)(4). On June 18, 2018, the FEC found that there is Reason to Believe ("RTB") that McSally for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) by failing to file the 48-Hour Notices. Based on the FEC's schedule of civil money penalties at 11 CFR § 111.44, the amount of your civil money penalty calculated at the RTB stage is \$6,282. Please see the attached copy of the Commission's administrative fine regulations at 11 CFR §§ 111.30-111.55. Attachment 2. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. <http://www.fec.gov/af/af.shtml>. 11 CFR § 111.34. The amount of the civil money penalty is \$142 for each non-filed notice plus 10 percent of the dollar amount of the contributions not timely reported. The civil money penalty increases by 25 percent for each prior violation. Send your payment of \$6,282 within forty (40) days of the finding, or by July 28, 2018.

At this juncture, the following courses of action are available to you:

**1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty**



If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response to the FEC's Office of Administrative Review, 1050 First Street, NE, Washington, DC 20002. Your response must include the AF# (found at the top of page 1 under your committee's identification number) and be received within forty (40) days of the Commission's RTB finding, or July 28, 2018. 11 CFR § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty, and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 CFR § 111.36(c).

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 CFR § 111.35(b). In order for a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 CFR § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 CFR § 111.35(d).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S. District Court under 52 U.S.C. § 30109. 11 CFR § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

## **2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge**

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that McSally for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.* The FEC may take any and all appropriate

action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 CFR § 111.51(a)(2).

**3. If You Choose to Pay the Civil Money Penalty**

If you should decide to pay the calculated civil money penalty, follow the payment instructions on page 4 of this letter. Upon receipt of your payment, the FEC will send you a final determination letter.

**NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS**

**4. Partial Payments**

If you make a payment in an amount less than the calculated civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assesses upon making a final determination.

**5. Settlement Offers**

Any offer to settle or compromise a debt owed to the Commission, including a payment in an amount less than the calculated civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assesses upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 52 U.S.C. § 30109(a)(2). Unless you notify the FEC in writing that you wish the matter to be made public, it will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) until it is placed on the public record at the conclusion of this matter in accordance with 11 CFR § 111.42.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Aimee Wechsler in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,

*Carole C. Hunter*

Caroline C. Hunter  
Chair

---

**ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS**

In accordance with the schedule of penalties at 11 CFR § 111.44, the amount of your civil money penalty calculated at RTB is \$6,282 for the 2014 Arizona Primary Election and 2014 General Election 48-Hour Notification Reports.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit [www.fec.gov/af/pay.shtml](http://www.fec.gov/af/pay.shtml) to be directed to Pay.gov's Administrative Fine Program Payment form.

This penalty may also be paid by check or money order, made payable to the Federal Election Commission. It should be sent by mail to:

Federal Election Commission  
P.O. Box 979058  
St. Louis, MO 63197-9000

If you choose to send your payment by courier or overnight delivery, please send to:

U.S. Bank - Government Lockbox  
FEC #979058  
1005 Convention Plaza  
Attn: Government Lockbox, SL-MO-C2GL  
St. Louis, MO 63101

**PAYMENTS BY PERSONAL CHECK**

Personal checks will be converted into electronic funds transfers (EFTS). Your account will be electronically debited for the amount on your check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

**PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT**

---

FOR: McSally for Congress

FEC ID#: C00512236

AF#: 3373

PAYMENT DUE DATE: July 28, 2018

PAYMENT AMOUNT DUE: \$6,282

**VENABLE** LLP

600 MASSACHUSETTS AVE., NW WASHINGTON, DC 20001  
T 202.344.4000 F 202.344.8300 www.Venable.com

July 26, 2018

James E. Tyrrell III

T 202.344.4522  
F 202.344.8300  
jetyrrell@venable.com

Federal Election Commission  
Office of Administrative Review  
1050 First Street NE  
Washington, DC 20002  
VIA EMAIL: [CELA@fec.gov](mailto:CELA@fec.gov)

**Re: AF# 3373; Challenge to RTB Finding and Calculation of  
Civil Money Penalty from McSally for Congress (C00512236)**

Dear Reviewing Officer:

We are writing this letter on behalf of McSally for Congress, and Paul Kilgore, in his official capacity as Treasurer (collectively, "MFC"), to challenge the Reason to Believe ("RTB") finding and the calculation of the civil money penalty in AF# 3373 pursuant to 11 CFR § 111.35. As you are aware, the RTB finding in this matter stemmed from the Audit Division's audit of MFC's activities during the 2013-14 election cycle and the Commission's subsequent Final Audit Report. Specifically, this Administrative Fine case derives from Finding 4 of the Final Audit Report, in which the Commission approved the Audit Division's finding that MFC failed to file or untimely filed a number of 48-hour notices for contributions received prior to the 2014 primary and general elections in Arizona's Second Congressional District. We challenge the Administrative Fine on the grounds of factual errors in the RTB finding and miscalculation of the civil money penalty.

As an initial matter, it is important to note that from the very beginning of the audit process that led to this this Administrative Fine case, MFC pointed out on multiple occasions the discrepancies in Finding 4 between the data presented to MFC at the Exit Conference and the figures set forth in the Interim Audit Report ("IAR"), Draft Final Audit Report ("DFAR"), and ultimately the Final Audit Report ("FAR"). For example, in our response to the IAR, we stated with respect to Finding 4:

The IAR states that the Committee did not file 48-hour notices for 29 contributions totaling \$91,053, and ultimately filed 48-hour notices for four contributions totaling \$8,800. In the IAR, the total error amount for non-filed or untimely filed 48-hour notices in the IAR is 33 contributions totaling \$99,853. The Committee notes, however, that these amounts differ from the amounts presented at

July 26, 2018

Page 2

the Exit Conference. At the Exit Conference, Audit staff stated that the Committee did not file notices for 26 contributions totaling \$47,345.55, and untimely filed notices for 6 contributions totaling \$14,000. Thus, at the Exit Conference, the total error amount for 48-hour notices that were not filed or were untimely filed totaled \$61,345. This is a difference of \$38,508, and again, the Committee does not understand why the amounts changed or why there is such a discrepancy between two communications by Audit staff on the same topic.<sup>1</sup>

In our response to the DFAR, we once again pointed out these discrepancies and requested clarification from the Audit staff, which was never provided. Specifically, we stated with respect to Finding 4:

The Committee's response to the IAR pointed out the discrepancy between the number and amount of untimely filed 48-hour contribution reports presented to the Committee at the Exit Conference and the number and amount contained in the IAR. However, the DFAR does not address our concerns or provide any explanation for this discrepancy other than a general statement that "preliminary findings at the exit conference...may be subject to change or modification based on additional documentation; internal review; legal advice, etc."<sup>2</sup> We respectfully request an explanation behind this discrepancy.<sup>3</sup>

In short, MFC was never given an explanation for why the information provided to us at the Exit Conference differed significantly from the data set forth in the IAR, DFAR, and ultimately Finding 4 of the FAR adopted by the Commission. It is one thing for the Audit Division to reach findings within the context of an Audit, and for the Commission to adopt those findings. It is another thing entirely for the Commission to find RTB and impose an administrative fine on a committee based on such inconsistent findings, without ever offering an explanation for the discrepancies or even an accurate list of the alleged contributions triggering the need to file the 48-hour contribution reports in the first place. We believe it was this lack of transparency and due process during the course of the audit that contributed to the significant discrepancies and inaccuracies in the contribution list contained on pages 5 and 6 of Chairwoman Hunter's June 18, 2018 letter informing MFC of this Administrative Fine case.

---

<sup>1</sup> McSally for Congress, Response to Interim Audit Report (July 19, 2017), at 6.

<sup>2</sup> Citing Draft Final Audit Report, at 5 n. 8.

<sup>3</sup> McSally for Congress, Response to Draft Final Audit Report (Nov. 6, 2017), at 4.

July 26, 2018  
Page 3

***The Contribution List in Attachment 1 of the Administrative Fine Letter Contains Glaring Factual Inaccuracies, Which Results in a Miscalculation of the Civil Penalty***

Chairwoman Hunter's letter states that, "Our records indicate that McSally for Congress did not submit 48-hour Notices for contributions of \$1,000 or more, received between August 7, 2014 and August 23, 2014 and between October 16, 2014 and November 1, 2014, totaling \$54,300, as required by 52 U.S.C. §30104(a)(6)(A)"<sup>4</sup> and cites the contribution list in Attachment 1 as support for this contention. However, the list in Attachment 1, titled "Contributions for Which a 48-Hour Notice Was Not Timely Received," which formed the basis for the Commission's RTB finding and resulting administrative fine of \$6,282, contains significant factual inaccuracies. This includes numerous instances where the date of receipt of such contributions appears to be manufactured out of whole cloth.

For instance, the list cites a number of contributions alleged to have been received by MFC on 10/30/14. However, when cross-referencing MFC's most recently amended reports from that period, which the Audit Division considers materially correct and accurate, there are no records of a 10/30/14 receipt date for more than half of these cited contributions. For example, there are no records that MFC ever received a contribution from William Assenmacher on 10/30/14. Mr. Assenmacher shows up on MFC's reports as having made a contribution on 9/14/13, but that was outside the 48-hour reporting window. Likewise, there are no records that MFC ever received a contribution from Robert Tuttle on 10/30/14. There are records in the FEC database that Mr. Tuttle made a contribution to the McSally Tobin Victory Committee, a joint fundraising committee, that was received by that joint committee on 11/3/14, but that was also clearly after the 48-hour reporting window. The only other contribution from Mr. Tuttle to MFC during the 2014 election cycle was received by MFC on February 10, 2014.

Not only does the contribution list in Attachment 1 include contributions that never occurred, such as Mr. Tuttle's, but it also contains glaring factual inaccuracies with respect to the dates received. Chairwoman Hunter's letter adds a footnote to the chart in Attachment 1, stating that "the dates listed in the chart reflect the date of receipt discovered during the audit fieldwork (Audit case 2-748)." However, this contention cannot possibly square with reality, as various dates of receipt alleged in the chart directly conflict with MFC's most recently amended reports and its bank records. For example, the contribution from Ivan Kasser, which is reflected on the chart as being received on 10/30/14, was actually received on 10/17/14. Similarly, the contribution from Kenneth Ellegard, which is listed on the chart as being received on 10/30/14, was actually received on 10/21/14. The same date discrepancy issue holds true for almost half of the contributions listed on the chart.

---

<sup>4</sup> McSally for Congress, AF# 3373, Letter from Chairwoman Caroline Hunter to Paul Kilgore (June 18, 2018), at 5.

VENABLE<sup>®</sup><sub>LLP</sub>

---

July 26, 2018

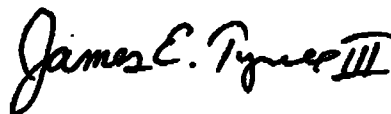
Page 4

***Conclusion***

Because the chart in Attachment 1 formed the basis for the Commission's RTB finding and the calculation of the administrative fine, the fact that the chart contains such obvious factual inaccuracies calls into question the legitimacy of the entire RTB finding, as it was based on false information. Likewise, because the administrative fine program is based on strict formulas, the proposed civil money penalty of \$6,282 cannot possibly be correct because it was arrived at using incorrect data and figures. We therefore challenge the administrative fine under both 11 CFR §§ 111.35(b)(1) and (b)(2), and demand that the Commission finally provide a clear explanation as to where it is coming up with its data and numbers—a request we have been making for the last two and a half years. Furthermore, because MFC has now had to expend even more of its resources calling attention to and defending itself from the Commission staff's carelessness and lack of transparency, we request that the Commission dismiss AF# 3373 and put an end to this process that has now lingered for over three years. Enough is enough.

Thank you for your consideration of this matter, and please do not hesitate to contact me directly at (202) 344-4522 with any questions.

Respectfully submitted,



James E. Tyrrell III  
*Counsel to McSally for Congress  
and Paul Kilgore as Treasurer*



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 30, 2018

**REVIEWING OFFICER RECOMMENDATION  
OFFICE OF ADMINISTRATIVE REVIEW ("OAR")**

AF# 3373 – McSally for Congress and Paul Kilgore, in his official capacity as Treasurer (C00512236)

**Summary of Recommendation**

Make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$6,022 civil money penalty.

**Reason-to-Believe Background**

In connection with the 2014 Arizona Primary Election held on August 26, 2014, the respondents were required to file 48-Hour Notices of Contributions/Loans ("48-Hour Notices") for contributions of \$1,000 or more received between August 7, 2014 and August 23, 2014. In connection with the 2014 General Election held on November 4, 2014, the respondents were required to file 48-Hour Notices for contributions of \$1,000 or more received between October 16, 2014 and November 1, 2014.

On June 18, 2018, the Commission found reason to believe ("RTB") that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file 48-Hour Notices for 28 contributions totaling \$54,300 and made a preliminary determination that the civil money penalty was \$6,282 based on the schedule of penalties at 11 C.F.R. § 111.44. A letter was mailed to the respondents' address of record from the Reports Analysis Division ("RAD") on June 18, 2018 to notify them of the Commission's RTB finding and civil money penalty.

**Legal Requirements**

The Federal Election Campaign Act ("Act") requires that the principal campaign committee of a candidate must notify the Commission, in writing, of any contribution of \$1,000 or more received after the 20<sup>th</sup> day but more than 48 hours before an election. The principal campaign committee must notify the Commission within 48 hours of receipt of the contribution. The 48-hour notification shall be in addition to all other reporting requirements under the Act. 52 U.S.C. § 30104(a)(6)(A) and 11 C.F.R. § 104.5(f). Reports electronically filed must be received and validated at or before 11:59 pm Eastern Standard/Daylight Time on the filing deadline to be



timely filed. 11 C.F.R. §§ 100.19(c) and 104.5(e). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

### **Summary of Respondents' Challenge**

On July 26, 2018, the Commission received the written response ("challenge") from counsel challenging the RTB finding on the grounds of factual errors and the miscalculation of the civil money penalty. Counsel notes that the RTB finding stems from the FEC's audit of the Committee's 2013-2014 election cycle activity and a resulting finding in the FEC's Final Audit Report. He further explains that the Committee pointed out discrepancies with respect to 48-Hour Notices throughout the audit process, yet "...never received an explanation for why the information provided to [the Committee] at the Exit Conference differed significantly from the [Audit Reports]." Counsel contends that "it was this lack of transparency and due process during the course of the audit that contributed to the significant discrepancies and inaccuracies in the [RTB] contribution list."

Counsel states that there are discrepancies between the RTB contribution list and the Committee's most recent amendments. He further explains that the RTB finding cites numerous contributions received on October 30, 2014, yet "there are no records of a 10/30/14 receipt date for more than half of these cited contributions." He identifies the following errors in the RTB contribution list:

- 1) Contribution from William Assenmacher was received on September 14, 2013 (48-Hour Notice not required);
- 2) Contribution from Robert Tuttle was received as part of a transfer from the McSally Tobin Victory Committee ("MTVC") on November 3, 2014 (48-Hour Notice not required);
- 3) Contribution from Ivan Kasser was received on October 17, 2014 and;
- 4) Contribution from Kenneth Ellegard was received on October 21, 2014.

Counsel concludes by questioning the accuracy of the entire RTB finding and demanding a justification for the cited contributions.

### **Analysis**

The challenge contends that many of the cited contributions do not align with the data disclosed on the most recent amendments to the 2014 October Quarterly and Post-General Reports. The Reviewing Officer re-evaluated all contributions cited in the RTB finding and linked 27 of the 28 contributions cited at RTB to contributions disclosed on the most recent amendments. See Attachment 3 for clarification and recommended action at final determination for each cited contribution.

With respect to the 4 contributions specifically mentioned in the challenge, the Reviewing Officer concludes the following:

- 1) At RTB, the Commission cited a \$2,600 contribution from William Assenmacher received on October 30, 2014. Counsel states this contribution was received on September 14, 2013 and did not require a 48-Hour Notice. The Reviewing Officer determined the cited contribution is disclosed on the Amended 2014 Post-General Report as a \$2,600 contribution from Robert W. Assenmacher, which also aligns with supporting audit documentation.<sup>1</sup> MTVC received the original contribution on October 17, 2014. On October 30, 2014, the Committee received the corresponding transfer from MTVC. For purposes of the RTB finding, the Commission considered October 30, 2014 the receipt date. The Reviewing Officer concludes a 48-Hour Notice was required for this contribution but was not timely filed.
- 2) At RTB, the Commission cited a \$2,600 contribution from Robert Tuttle received on October 30, 2014. Counsel states this contribution was received by MTVC on November 3, 2014 and did not require a 48-Hour Notice. After further review, audit documentation supports that MTVC received the original contribution on November 3, 2014, and the Committee received the corresponding transfer from MTVC on November 12, 2014.<sup>2</sup> Therefore, the Reviewing Officer concludes a 48-Hour Notice was not required for this contribution.
- 3) At RTB, the Commission cited a \$1,600 contribution from Ivan Kasser received on October 30, 2014. Counsel states this contribution was received on October 17, 2014. The Reviewing Officer determined the cited contribution is disclosed on the Amended 2014 Post-General Report as a \$1,600 contribution from Mr. Ivan M. Kasser. MTVC received the original contribution on October 17, 2014. On October 30, 2014, the Committee received the corresponding transfer from MTVC. For purposes of the RTB finding, the Commission considered October 30, 2014 the receipt date. The Reviewing Officer concludes a 48-Hour Notice was required for this contribution but was not timely filed.
- 4) At RTB, the Commission cited a \$2,600 contribution from Kenneth Ellegard received on October 30, 2014. Counsel states this contribution was received on October 21, 2014. The Reviewing Officer determined the cited contribution is disclosed on the Amended 2014 Post-General Report as a \$2,600 contribution from Kenneth Ellegard. MTVC received the original contribution on October 21, 2014. On October 30, 2014, the Committee received the corresponding transfer from MTVC. For purposes of the RTB finding, the Commission considered October 30, 2014 the receipt date. The Reviewing Officer concludes a 48-Hour Notice was required for this contribution but was not timely filed.

<sup>1</sup> The original 2014 Post-General Report and first amendment filed 12/5/2014 disclosed the contributor as Mr. William R. Assenmacher. The most recent amendment filed 2/1/2016 disclosed the contributor as Robert W. Assenmacher.

<sup>2</sup> The contribution is not currently disclosed on any amended reports.

At the time of RTB, the Commission calculated the civil money penalty based on the Committee's failure to file 48-Hour Notices for 28 contributions totaling \$54,300. The Reviewing Officer agrees that 1 contribution totaling \$2,600 should be removed from the calculation of the civil money penalty. As such, the respondents failed to file a 48-Hour Notice for 27 contributions totaling \$51,700. See Attachment 3. The civil money penalty calculation for 48-Hour Notices is contained at 11 C.F.R. § 111.44. The calculation is \$142 plus 10% of the amount of the contributions not reported on *each* 48-Hour Notice, plus 25% for each previous violation. The number of missing notices should be calculated by determining the minimum number of notices the Committee could have filed to cover the contributions in question. The minimum number of 48-Hour Notices the Committee could have filed to cover the contributions in question equals 6. Thus, the amount of the civil money penalty should be  $[(\$142 \times 6 \text{ missing notices}) + (.10 \times \$51,700 \text{ in total contributions})]$  or \$6,022. Therefore, the Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$6,022 civil money penalty, reduced from the RTB civil money penalty of \$6,282.

#### **OAR Recommendations**

1. Adopt the Reviewing Officer Recommendation for AF# 3373 involving McSally for Congress and Paul Kilgore, in his official capacity as Treasurer, in making the final determination;
2. Make a final determination in AF# 3373 that McSally for Congress and Paul Kilgore, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$6,022 civil money penalty (reduced from the RTB civil money penalty of \$6,282); and
3. Send the appropriate letter.

#### **Attachments**

- Attachment 1 –
- Attachment 2 –
- Attachment 3 –
- Attachment 4 – Declaration from RAD
- Attachment 5 – Declaration from OAR

**DECLARATION OF KRISTIN D. ROSER**

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission ("Commission"). In my capacity as Chief of the Compliance Branch, I oversee the initial processing of the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. It is the practice of the Reports Analysis Division to document all calls to or from committees regarding a letter they receive or any questions relating to the FECFile software or administrative fine regulations, including due dates of reports and filing requirements.
3. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to McSally for Congress:
- A) Request for Additional Information for the Amended 2014 October Quarterly Report, received October 17, 2014, referencing the missing 48-Hour Notices (sent via electronic mail to: james@jct3law.com);
  - B) Request for Additional Information for the Amended 2014 30 Day Post-General Report, received December 5, 2014, referencing the missing 48-Hour Notices (sent via electronic mail to: james@jct3law.com);
  - C) Reason-to-Believe Letter, dated June 18, 2018, referencing the missing 48-Hour Notices (sent via overnight mail to the address of record).
4. I hereby certify that I have searched the Commission's public records and find that McSally for Congress failed to timely file 48-Hour Notices with the Commission for the cited contributions.
5. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecoms for the matter have been provided. This declaration was executed at Washington, D.C. on the 2<sup>nd</sup> day of August, 2018.

*Kristin Roser*

Kristin D. Roser  
Chief, Compliance Branch  
Reports Analysis Division  
Federal Election Commission



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RQ-2

November 20, 2014

JAMES C. THOMAS III, TREASURER  
MCSALLY FOR CONGRESS  
P.O. BOX 19128  
TUCSON, AZ 85731-9128

Response Due Date

IDENTIFICATION NUMBER: C00512236

12/26/2014

REFERENCE: AMENDED OCTOBER QUARTERLY REPORT (08/07/2014 - 09/30/2014),  
RECEIVED 10/17/2014

Dear Treasurer:

This letter is prompted by the Commission's preliminary review of the report referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. **Failure to adequately respond by the response date noted above could result in an audit or enforcement action.** Additional information is needed for the following 6 item(s):

1. The beginning cash balance of this report does not equal the ending balance of your 12 Day Pre-Primary Report. Please correct this discrepancy and amend all subsequent reports that may be affected by the correction. (52 U.S.C. § 30104(b)(1) (formerly 2 U.S.C. § 434(b)(1)) and 11 CFR § 104.3(a)(1))
2. The totals listed on Line(s) 6(a), 6(c), 7(a), 7(c), 11(a)(ii), 11(a)(iii), 11(e), 15, 16, 17 and 22, Column B of the Summary and Detailed Summary Page(s) appear to be incorrect. Column B figures for the Summary and Detailed Summary Pages should equal the sum of the Column B figures on your previous report and the Column A figures on this report. Please file an amendment to your report to correct the Column B discrepancies for this report and all subsequent report(s) which may be affected by this correction. Note that Column B should reflect only the election cycle-to-date totals (11/7/12 through 11/4/14). (52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) and 11 CFR § 104.3)
3. Schedule A of your report discloses one or more contributions that appear to exceed the limits set forth in the Act (see attached).

An individual or a political committee other than an authorized committee or qualified multi-candidate committee may not make a contribution(s) to a

## MCSALLY FOR CONGRESS

Page 2 of 6

candidate for federal office in excess of \$2,600 per election. An authorized committee may not make a contribution(s) to a candidate for federal office in excess of \$2,000 per election. A qualified multi-candidate committee and all affiliated committees may not make a contribution(s) to a candidate for federal office in excess of \$5,000 per election. The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. (52 U.S.C. § 30116(a) and (f) (formerly 2 U.S.C. § 441a(a) and (f)); 11 CFR § 110.1(b), (e) and (k))

If any apparently excessive contribution in question was incompletely or incorrectly disclosed, you must amend your original report with the clarifying information. If any contribution you received exceeds the limits, you may have to refund the excessive amount.

Excessive contributions may be retained if, within 60 days of receipt, the excessive portions are properly redesignated or reattributed. Guidelines for each option are provided below.

For reattributions, excessive contributions from individuals can be retained if, within 60 days of receipt, the excessive amount is properly reattributed to another person. Please note that reattributions only apply to excessive contributions from individuals. An excessive contribution is considered properly reattributed if (1) the contributors provide the committee with written documentation, signed by each contributor, authorizing a reattribution and indicating the amount of the contribution to be attributed to each contributor; or (2) the committee reattributes by presumption the excessive portion of the contribution if the contribution was made on a written instrument from a joint account and was signed by only one of the account holders. In this case, the treasurer must notify the contributors in writing within 60 days of receiving the contribution that the committee intends to reattribute the excessive portion and must give the contributor an opportunity to request a refund. (11 CFR § 110.1(k)(3)(ii)(B))

For redesignations, the funds can be retained if, within 60 days of receipt, the excessive amount is properly redesignated for a different election. An excessive contribution is considered properly redesignated if (1) the committee obtains signed written documentation from the contributor(s) authorizing the redesignation of the contribution for another election, provided that the new designation does not exceed the limitations on contributions made with respect

## MCSALLY FOR CONGRESS

Page 3 of 6

to that election; or (2) your committee redesignates by presumption the excessive portion of the contribution for another election provided that the new designation does not exceed the limitations on contributions made with respect to that election. In this case, the treasurer must notify the contributor of the redesignation in writing within 60 days of the treasurer's receipt of the contribution. The notification must give the contributor an opportunity to request a refund. (11 CFR § 110.1(b)(5)(ii)(B)) Please note that you cannot presumptively redesignate an excessive contribution from a multi-candidate committee. Also, a contribution can only be redesignated to a previous election to the extent that the contribution does not exceed the committee's net debts outstanding for that election. (11 CFR § 110.1(b)(3)(i))

If the foregoing conditions for reattributions or redesignations are not met within 60 days of receipt of the contribution, the excessive amount must be refunded. See 11 CFR § 103.3(b)(1).

If you have not already done so, please inform the Commission of your corrective action immediately in writing and provide photocopies of any refund checks and/or letters reattributing or redesignating the contributions in question. Refunds are reported on Line 20(a), (b), or (c), as applicable, of the Detailed Summary Page and on a supporting Schedule B of the report covering the period in which they are made. Redesignations and reattributions are reported as memo entries on Schedule A of the report covering the period in which the authorization for the redesignation and/or reattribution is received. (11 CFR § 104.8(d)(2), (3) and (4))

Although the Commission may take further legal action concerning the acceptance of excessive contributions, your prompt action to refund, redesignate, and/or reattribute the excessive amount will be taken into consideration.

4. Schedule A of your report discloses one or more contributions received after the 2014 primary election that are designated for the 2014 primary election. These contributions may only be accepted to the extent that the committee has net debts outstanding from the 2014 primary election. For more information on how to calculate net debts outstanding, please see page 27 of the Campaign Guide for Congressional Candidates and Committees, which is available online at <http://www.fec.gov/pdf/candgui.pdf>. (11 CFR § 110.1(b)(3)(i))

A contribution is considered made when the contributor relinquishes control over the contribution. A contributor shall be considered to have relinquished

## MCSALLY FOR CONGRESS

Page 4 of 6

control over the contribution when it is delivered to the candidate, when it is delivered to an authorized committee of the candidate, or to an agent of an authorized committee of the candidate. A contribution that is mailed to any of the aforementioned recipients will be considered made on the date of the postmark. Envelopes should be retained for the committee's records. (11 CFR § 110.1(b)(6))

If any contribution in question was incompletely or incorrectly disclosed, you must amend your original report with the clarifying information. If a contribution exceeds the amount of net debts outstanding from the 2014 primary election, you may have to refund or redesignate the contribution.

The funds can be retained if, within 60 days of receipt, the excessive amount was properly redesignated for a different election. An excessive contribution is considered properly redesignated if (1) the committee obtains signed written documentation from the contributor(s) authorizing the redesignation of the contribution for another election provided that the new designation does not exceed the limitations on contributions made with respect to that election, or (2) the committee redesignates by presumption the excessive portion of the contribution for another election provided that the new designation does not exceed the limitations on contributions made with respect to that election. In this case, the treasurer must notify the contributor of the redesignation in writing within 60 days of the treasurer's receipt of the contribution. The notification must give the contributor an opportunity to request a refund. (11 CFR § 110.1(b)(5)(ii)(B))

If the foregoing conditions for redesignations are not met within 60 days of receipt, the excessive amount must be refunded. See 11 CFR § 103.3(b)(3).

If you have not already done so, please inform the Commission of your corrective action immediately in writing and provide photocopies of any refund checks and/or letters redesignating the contributions in question. Refunds are reported on Line 20(a), (b) or (c), as applicable, of the Detailed Summary Page and on a supporting Schedule B of the report covering the period in which they are made. Redesignations are reported as memo entries on Schedule A of the report covering the period in which the authorization for the redesignation is received. (11 CFR § 104.8(d)(2), (3) and (4))

Although the Commission may take further legal action concerning the acceptance of excessive contributions, your prompt action to refund or redesignate the excessive amount will be taken into consideration.



## MCSALLY FOR CONGRESS

Page 5 of 6

5. Schedule A of your report indicates that your committee may have failed to file one or more of the required 48-hour notices regarding "last minute" contributions received by your committee after the close of books for the 12 Day Pre-Primary Report (see attached). A principal campaign committee must notify the Commission, in writing, within 48 hours of any contribution of \$1,000 or more received between two and twenty days before an election. These contributions are then reported on the next report required to be filed by the committee. To ensure that the Commission is notified of last minute contributions of \$1,000 or more to your campaign, it is recommended that you review your procedures for checking contributions received during the aforementioned time period. The failure to file 48-hour notices may result in civil money penalties or legal enforcement action. (11 CFR § 104.5(f))

If any contribution of \$1,000 or more was incorrectly reported, you must amend your original report with the clarifying information.

6. Your committee filed 48-hour notices reporting the following "last minute" contributions (see attached). However, these contributions do not appear on Schedule A of this report. Please amend your report to include these contributions or provide an explanation of these apparent discrepancies. (11 CFR § 104.3(a)(4)(i))

- In the previous election cycle, your committee established that "best efforts" was being used to obtain the full name, mailing address, occupation and name of employer for each individual who contributes in excess of \$200 in an election cycle. This "best efforts" description must be reconfirmed for each election cycle. Please provide a detailed description of your procedures for the current election cycle. (11 CFR § 104.7) For more information on demonstrating "best efforts," please refer to the Campaign Guide for Congressional Committees and Candidates.

**Please note, you will not receive an additional notice from the Commission on this matter.** Adequate responses must be received by the Commission on or before the due date noted above to be taken into consideration in determining whether audit action will be initiated. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action. **Requests for extensions of time in which to respond will not be considered.**

Electronic filers must file amendments (to include statements, designations and reports)



### Excessive Contributions from Individuals

Contributor Name	Date	Amount	Election
Bowman, David B Mr.	9/22/14	\$2,000.00	G2014
Bowman, David B Mr.	9/23/14	\$1,000.00	G2014
Bowman, David B Mr.	9/30/14	\$2,000.00	G2014
Coons, Beth Ms.	6/25/14	\$1,000.00	G2014
Coons, Beth Ms.	9/4/14	\$2,000.00	G2014
Dittmann, Timothy	12/19/13	\$500.00	P2014
Dittmann, Timothy Mr.	1/29/14	\$289.08	P2014
Dittmann, Timothy Mr.	3/31/14	\$500.00	P2014
Dittmann, Timothy C. Mr.	8/15/14	\$500.00	P2014
Dittmann, Timothy C. Mr.	8/27/14	\$2,600.00	P2014
Hall, L. Neel Mr.	8/19/13	\$1,000.00	P2014
Hall, Neel Mr.	10/1/13	\$1,000.00	P2014
Hall, Neel Mr.	12/13/13	\$250.00	P2014
Hall, Neel Mr.	3/19/14	\$350.00	P2014
Hall, Neel Mr.	8/1/14	\$250.00	P2014
Hamilton, Franklin W.	9/18/13	\$1,000.00	P2014
Hamilton, Franklin W.	12/6/13	\$250.00	P2014
Hamilton, Franklin W.	12/18/13	\$250.00	P2014
Hamilton, Franklin W., Mr.	8/20/13	\$2,000.00	P2014
Schwab, Robert Mr.	6/30/14	\$2,600.00	G2014
Schwab, Robert Mr.	9/1/14	\$500.00	G2014
Schwab, Robert Mr.	9/27/14	\$500.00	G2014
Shields, William L.	10/1/13	\$100.00	P2014
Shields, William L.	12/29/13	\$100.00	P2014
Shields, William L.	1/18/14	\$100.00	P2014
Shields, William L.	2/11/14	\$100.00	P2014
Shields, William L.	3/11/14	\$200.00	P2014
Shields, William L.	4/30/14	\$200.00	P2014
Shields, William L.	5/30/14	\$250.00	P2014
Shields, William L.	6/4/14	\$300.00	P2014
Shields, William L.	6/28/14	\$100.00	P2014
Shields, William L.	7/22/14	\$300.00	P2014
Shields, William L.	8/6/14	\$400.00	P2014

Shields, William L.	8/25/14	\$500.00	P2014
Shields, William L.	9/9/14	\$800.00	P2014
Siler, John R Dr. M.D.	9/27/14	\$500.00	G2014
Siler, John R Dr. M.D.	8/28/14	\$500.00	G2014
Siler, John R Dr. M.D.	9/1/14	\$750.00	G2014
Siler, John R Dr. M.D.	9/1/14	\$750.00	G2014
Siler, John R Dr. M.D.	9/1/14	\$750.00	G2014
Slone, James C., Mr.	4/23/14	\$2,500.00	P2014
Slone, James C., Mr.	8/19/14	\$1,000.00	P2014
Swigert, Henry Mr.	9/25/14	\$4,000.00	G2014
Tiernan, Helen S. Ms.	5/12/14	\$500.00	P2014
Tiernan, Helen S. Ms.	5/19/14	\$250.00	P2014
Tiernan, Helen S. Ms.	6/26/14	\$500.00	P2014
Tiernan, Helen S.	8/14/14	\$500.00	P2014
Tiernan, Helen S.	8/22/14	\$1,000.00	P2014
Vassallo, John Mr.	9/29/14	\$2,100.00	G2014
Vassallo, John Mr.	9/24/14	\$1,033.50	G2014
Wadsworth, Nina Mrs.	12/4/13	\$2,600.00	P2014
Wadsworth, Nina Mrs.	8/14/14	\$2,600.00	P2014

40222220001

Contributor Name	Date	Amount	Election
Taylor, Larry Mr.	8/7/14	\$1,000.00	P2014
Peabody Energy Corporation Political Action Committee (peabody Pac)	8/15/14	\$2,500.00	P2014





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RQ-2

January 13, 2015

JAMES C. THOMAS III, TREASURER  
MCSALLY FOR CONGRESS  
P.O. BOX 19128  
TUCSON, AZ 85731-9128

**Response Due Date**

**02/17/2015**

IDENTIFICATION NUMBER: C00512236

REFERENCE: AMENDED 30 DAY POST-GENERAL REPORT (10/16/2014 -  
11/24/2014), RECEIVED 12/05/2014

Dear Treasurer:

This letter is prompted by the Commission's preliminary review of the report referenced above. This notice requests information essential to full public disclosure of your federal election campaign finances. **Failure to adequately respond by the response date noted above could result in an audit or enforcement action.** Additional information is needed for the following 5 item(s):

1. Schedule A of your report discloses one or more contributions that appear to exceed the limits set forth in the Act (see attached).

An individual or a political committee other than an authorized committee or qualified multi-candidate committee may not make a contribution(s) to a candidate for federal office in excess of \$2,600 per election. An authorized committee may not make a contribution(s) to a candidate for federal office in excess of \$2,000 per election. A qualified multi-candidate committee and all affiliated committees may not make a contribution(s) to a candidate for federal office in excess of \$5,000 per election. The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. (52 U.S.C. § 30116(a) and (f) (formerly 2 U.S.C. § 441a(a) and (f)); 11 CFR § 110.1(b), (e) and (k))

If any apparently excessive contribution in question was incompletely or incorrectly disclosed, you must amend your original report with the clarifying information. If any contribution you received exceeds the limits, you may have to refund the excessive amount.

Excessive contributions may be retained if, within 60 days of receipt, the

## MCSALLY FOR CONGRESS

Page 2 of 5

excessive portions are properly redesignated or reattributed. Guidelines for each option are provided below.

For reattributions, excessive contributions from individuals can be retained if, within 60 days of receipt, the excessive amount is properly reattributed to another person. Please note that reattributions only apply to excessive contributions from individuals. An excessive contribution is considered properly reattributed if (1) the contributors provide the committee with written documentation, signed by each contributor, authorizing a reattribution and indicating the amount of the contribution to be attributed to each contributor; or (2) the committee reattributes by presumption the excessive portion of the contribution if the contribution was made on a written instrument from a joint account and was signed by only one of the account holders. In this case, the treasurer must notify the contributors in writing within 60 days of receiving the contribution that the committee intends to reattribute the excessive portion and must give the contributor an opportunity to request a refund. (11 CFR § 110.1(k)(3)(ii)(B))

For redesignations, the funds can be retained if, within 60 days of receipt, the excessive amount is properly redesignated for a different election. An excessive contribution is considered properly redesignated if (1) the committee obtains signed written documentation from the contributor(s) authorizing the redesignation of the contribution for another election, provided that the new designation does not exceed the limitations on contributions made with respect to that election; or (2) your committee redesignates by presumption the excessive portion of the contribution for another election provided that the new designation does not exceed the limitations on contributions made with respect to that election. In this case, the treasurer must notify the contributor of the redesignation in writing within 60 days of the treasurer's receipt of the contribution. The notification must give the contributor an opportunity to request a refund. (11 CFR § 110.1(b)(5)(ii)(B)) Please note that you cannot presumptively redesignate an excessive contribution from a multi-candidate committee. Also, a contribution can only be redesignated to a previous election to the extent that the contribution does not exceed the committee's net debts outstanding for that election. (11 CFR § 110.1(b)(3)(i))

If the foregoing conditions for reattributions or redesignations are not met within 60 days of receipt of the contribution, the excessive amount must be refunded. See 11 CFR § 103.3(b)(1).



## MCSALLY FOR CONGRESS

Page 3 of 5

If you have not already done so, please inform the Commission of your corrective action immediately in writing and provide photocopies of any refund checks and/or letters reattributing or redesignating the contributions in question. Refunds are reported on Line 20(a), (b), or (c), as applicable, of the Detailed Summary Page and on a supporting Schedule B of the report covering the period in which they are made. Redesignations and reattributions are reported as memo entries on Schedule A of the report covering the period in which the authorization for the redesignation and/or reattribution is received. (11 CFR § 104.8(d)(2), (3) and (4))

Although the Commission may take further legal action concerning the acceptance of excessive contributions, your prompt action to refund, redesignate, and/or reattribute the excessive amount will be taken into consideration.

2. Schedule A of your report indicates that your committee may have failed to file one or more of the required 48-hour notices regarding "last minute" contributions received by your committee after the close of books for the 12 Day Pre-General Report (see attached). A principal campaign committee must notify the Commission, in writing, within 48 hours of any contribution of \$1,000 or more received between two and twenty days before an election. These contributions are then reported on the next report required to be filed by the committee. To ensure that the Commission is notified of last minute contributions of \$1,000 or more to your campaign, it is recommended that you review your procedures for checking contributions received during the aforementioned time period. The failure to file 48-hour notices may result in civil money penalties or legal enforcement action. (11 CFR § 104.5(f)) In addition, please note that 48 hour notices must be filed before the election. Contribution(s) received after an election will be considered not filed.

If any contribution of \$1,000 or more was incorrectly reported, you must amend your original report with the clarifying information.

3. Your committee filed a 48-hour notice disclosing a "last minute" contribution from Ted Chapman on 10/20/14. This contribution does not appear on a Schedule A of this report. Please amend your report to include this contribution or provide an explanation of this apparent discrepancy. (11 CFR § 104.3(a)(4)(i))

4. It appears that your committee may have filed duplicate 48-hour notices. Your committee filed two 48-hour notices for each of the attached

## MCSALLY FOR CONGRESS

Page 4 of 5

contributions; however, these contributions are only disclosed once on Schedule A of your report. Please amend your report to include the additional contributions or provide an explanation of the apparent discrepancies. (11 CFR §104.3(a)(4)(i))

5. Schedule A supporting Line 12 of the Detailed Summary Page(s) of your combined 2014 reports discloses transfer(s) totaling \$46,102.00 from the Friends of Winning Women, which is a joint fundraising committee affiliated with your committee. The sum of memo Schedule A is less than the total amount transferred. Please note that the sum of memo Schedule A supporting a transfer(s) from a joint fundraising committee should be greater than or equal to the amount of the transfer(s).

Each participating committee shall report its share for net proceeds received from the joint fundraising committee as a transfer-in on Schedule A. A memo Schedule A must be provided to itemize your committee's share of the gross contributions received through the joint fundraiser. The memo schedule should itemize each individual who has contributed an aggregate in excess of \$200 during the election cycle and provide the amount of unitemized contributions received. In addition, the memo schedule should itemize your committee's share of all contributions from political committees, regardless of amount. (11 CFR § 102.17(c)(8)(i)(B)) Please amend your report to include the missing Schedule A or provide an explanation for this apparent discrepancy.

- In the previous election cycle, your committee established that "best efforts" was being used to obtain the full name, mailing address, occupation and name of employer for each individual who contributes in excess of \$200 in an election cycle. This "best efforts" description must be reconfirmed for each election cycle. Please provide a detailed description of your procedures for the current election cycle. (11 CFR § 104.7) For more information on demonstrating "best efforts," please refer to the Campaign Guide for Congressional Committees and Candidates.

**Please note, you will not receive an additional notice from the Commission on this matter.** Adequate responses must be received by the Commission on or before the due date noted above to be taken into consideration in determining whether audit action will be initiated. Failure to comply with the provisions of the Act may also result in an enforcement action against the committee. Any response submitted by your committee will be placed on the public record and will be considered by the Commission prior to taking enforcement action. **Requests for extensions of time in which to respond will not be considered.**

MCSALLY FOR CONGRESS

Page 5 of 5

Electronic filers must file amendments (to include statements, designations and reports) in an electronic format and must submit an amended report in its entirety, rather than just those portions of the report that are being amended.

If you should have any questions regarding this matter or wish to verify the adequacy of your response, please contact me on our toll-free number (800) 424-9530 (at the prompt press 5 to reach the Reports Analysis Division) or my local number (202) 694-1170.

Sincerely,

*Robin C. Kelly*

Robin Kelly  
Senior Campaign Finance Analyst  
Reports Analysis Division

403

11-11-2011 11:11:11





Contributor Name	Date	Amount	Election
Assenmacher, William R.	10/30/14	\$2,600.00	G2014
Biggers, Edwin Mr.	10/17/14	\$2,400.00	G2014
Chapman, Shannon Mrs.	10/20/14	\$2,600.00	G2014
Chenevert, Sharon L.	10/30/14	\$2,000.00	G2014
Ellegard, Cheryl	10/30/14	\$2,600.00	G2014
Ellegard, Kenneth	10/30/14	\$2,600.00	G2014
Garcia, Eloisa S. Dr.	10/29/14	\$1,006.00	G2014
Goodman, Mike	10/30/14	\$2,600.00	G2014
Jackson, Norman Mr.	10/17/14	\$1,000.00	G2014
Kasser, Ivan M.	10/30/14	\$1,600.00	G2014
Lopez, Humberto S.	10/30/14	\$2,600.00	G2014
Mercer, Robert L. Mr.	10/31/14	\$2,600.00	G2014
Park, Hae	10/29/14	\$2,600.00	G2014
Pierce, Todd	10/30/14	\$2,600.00	G2014
Reay, Gordon M.	10/30/14	\$1,000.00	G2014
Remington, James Mr.	10/31/14	\$2,600.00	G2014
Sproul, Tiffani	10/30/14	\$1,300.00	G2014
Toretti, Christine J.	10/30/14	\$2,600.00	G2014
Tuttle, Robert	10/30/14	\$2,600.00	G2014
Volpe, Heather	10/30/14	\$1,300.00	G2014
Volpe, Jon D	10/30/14	\$1,300.00	G2014

**Apparent Duplicate 48 Hour Notices Filed**

Contributor Name	Date	Amount
Anderson, George Mr.	10/27/14	\$1,000.00
Drachman, Boyd Mr.	10/27/14	\$2,000.00
Johnston, Marilyn Ms.	10/27/14	\$1,000.00
Lane, David Mr.	10/22/14	\$2,600.00
Legasey, Edward E. Mr.	10/30/14	\$1,000.00
Londen, Jack L. Mr.	10/18/14	\$2,600.00
Matthews, Julia Ms.	10/30/14	\$2,600.00
Mayhall, Robert G. Mr.	10/30/14	\$1,600.00
Powell, Leon Mr.	10/30/14	\$1,000.00
Riley, Karen M. Mrs.	10/30/14	\$2,000.00
Rustand, Warren S. Mr.	10/30/14	\$2,600.00
Whiteman, Jeff Mr.	10/30/14	\$2,600.00

10/30/2014

### **Contributions for Which a 48-Hour Notice Was Not Timely Received**

**AF 3373**

**Committee ID: C00512236**

**Committee Name: McSally for Congress**

**Report Types: October Quarterly Report (8/7/2014 – 9/30/2014)**

### 30-Day Post-General Report (10/16/2014 – 11/24/2014)

**Primary 48-Hour Reporting Period: 8/7/2014 – 8/23/2014****General 48-Hour Reporting Period: 10/16/2014 – 11/1/2014**

CONTRIBUTOR	DATE <sup>1</sup>	AMOUNT	REPORTING PERIOD
LARRY TAYLOR	8/7/2014	\$1,000.00	PRIMARY
ELEANOR FOX-	8/7/2014	\$2,600.00	PRIMARY
GORDON AUSTIN-	8/7/2014	\$1,500.00	PRIMARY
BOB LEE-	8/14/2014	\$1,000.00	PRIMARY
LESTER STRONG-	8/14/2014	\$1,000.00	PRIMARY
NINA WADSWORTH-	8/14/2014	\$2,600.00	PRIMARY
PEABODY PAC	8/15/2014	\$2,500.00	PRIMARY
JAMES DRETLE-	8/17/2014	\$1,000.00	PRIMARY
GEORGE ANDERSON-	10/23/2014	\$1,000.00	GENERAL
TOM RICE FOR CONGRESS -	10/27/2014	\$2,000.00	GENERAL
HAE PARK-	10/29/2014	\$2,600.00	GENERAL
SHARON CHENEVERT	10/30/2014	\$2,000.00	GENERAL
CHERYL ELLEGARD	10/30/2014	\$2,600.00	GENERAL
HEATHER VOLPE	10/30/2014	\$1,300.00	GENERAL
IVAN KASSER	10/30/2014	\$1,600.00	GENERAL
TODD PIERCE	10/30/2014	\$2,600.00	GENERAL
TIFFANI SPROUL	10/30/2014	\$1,300.00	GENERAL
KENNETH ELLEGARD	10/30/2014	\$2,600.00	GENERAL
ROBERT TUTTLE	10/30/2014	\$2,600.00	GENERAL
MIKE GOODMAN	10/30/2014	\$2,600.00	GENERAL
JON VOLPE	10/30/2014	\$1,300.00	GENERAL
GORDON REAY	10/30/2014	\$1,000.00	GENERAL
CHRISTINE TORETTI	10/30/2014	\$2,600.00	GENERAL
WILLIAM ASSENMACHER	10/30/2014	\$2,600.00	GENERAL

<sup>1</sup> The dates listed in the chart reflect the date of receipt discovered during the audit fieldwork (Audit case 2-748).



JAMES MCDONNELL-	10/30/2014	\$2,600.00	GENERAL
JAMES STADLER-	10/31/2014	\$1,000.00	GENERAL
ROBERT MERCER	10/31/2014	\$2,600.00	GENERAL
JAMES REMINGTON	10/31/2014	\$2,600.00	GENERAL
	<b>TOTAL</b>	<b>\$54,300.00</b>	

**Proposed Civil Money Penalty: \$6,282 ((6 Notices Not Filed at \$142 each) + (10% of the Overall Contributions Not Filed))**

### DECLARATION OF RHIANNON MAGRUDER

- 1) I am the Reviewing Officer in the Office of Administrative Review for the Federal Election Commission ("Commission"). In my capacity as Reviewing Officer, I conduct research with respect to all challenges submitted in accordance with the Administrative Fine program.
- 2) The principal campaign committee of a candidate must file notifications disclosing contributions of \$1,000 or more which are received after the 20<sup>th</sup> day but more than 48 hours before an election. These notifications (also called 48-Hour Notices) must be filed with the Commission within 48 hours of the committee's receipt of the contribution(s).
- 3) I hereby certify that I have searched the Commission's public records and find that McSally for Congress and Paul Kilgore, in his official capacity as Treasurer, did not timely file the required 48-Hour Notices.
- 4) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Washington, D.C. on the 30th day of August, 2018.

Rhiannon Magruder  
Rhiannon Magruder  
Reviewing Officer  
Office of Administrative Review  
Federal Election Commission



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 31, 2018

James E. Tyrrell III  
Venable LLP  
600 Massachusetts Ave., NW  
Washington, DC 20001

McSally for Congress  
C00512236  
AF#: 3373

Dear Mr. Tyrrell:

On June 18, 2018, the Commission found reason to believe ("RTB") that McSally for Congress and Paul Kilgore, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to timely file 48-Hour Notices for 28 contributions totaling \$54,300 and made a preliminary determination that the civil money penalty was \$6,282 based on the schedule of penalties at 11 C.F.R. § 111.44.

After reviewing your written response and any supplemental information submitted by you and Commission staff, the Reviewing Officer has recommended that the Commission make a final determination. A copy of the Reviewing Officer's recommendation is attached.

You may file with the Commission Secretary a written response to the recommendation within 10 days of the date of this letter. Your written response should be sent to the Commission Secretary, 999 E Street, NW, Washington, DC 20463 or via facsimile (202-208-3333). Please include the AF # in your response. Your response may not raise any arguments not raised in your original written response or not directly responsive to the Reviewing Officer's recommendation. 11 C.F.R. § 111.36(f). The Commission will then make a final determination in this matter.

Please contact me at the toll free number 800-424-9530 (press 0, then press 1660) or 202-694-1158 if you have any questions.

Sincerely,

*Rhiannon Magruder*  
Rhiannon Magruder  
Reviewing Officer  
Office of Administrative Review



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION COMMISSION  
2018 DEC -7 AM 11:31

SENSITIVE

December 7, 2018

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*  
Staff Director

From: Patricia C. Orrock *PCO*  
Chief Compliance Officer

Rhiannon Magruder *RM*  
Reviewing Officer  
Office of Administrative Review

Subject: Final Determination Recommendation in AF# 3373 – McSally for Congress and Paul Kilgore, in his official capacity as Treasurer (C00512236)

On June 18, 2018, the Commission found reason to believe ("RTB") that the respondents violated 52 U.S.C. § 30104(a) for failing to timely file 48-Hour Notices for 28 contributions totaling \$54,300. The Commission made a preliminary determination that the civil money penalty was \$6,282 based on the schedule of penalties at 11 C.F.R. § 111.44.

On July 26, 2018, the Commission received their written response ("challenge"). After reviewing the challenge, the Reviewing Officer Recommendation ("ROR") dated August 30, 2018 was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference. The Reviewing Officer recommended that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$6,022 civil money penalty, reduced from the civil money penalty of \$6,282.

Within 10 days of transmittal of the recommendation, respondents may file a written response with the Commission Secretary which may not raise any arguments not raised in their challenge or not directly responsive to the ROR. 11 C.F.R. § 111.36(f). After the response period, counsel submitted correspondence to reiterate points made in the original challenge and provide additional information for Commission consideration. The Reviewing Officer is modifying its recommendations in consideration of all information received in the original challenge and subsequent correspondence. All Committee responses and OAR's final analyses are summarized below:

- 1) At RTB, the Commission cited a \$2,600 contribution from Eleanor Fox received on August 7, 2014. In correspondence subsequent to the ROR, counsel states that at the time of the 48-Hour Notice reporting period, the Committee was unaware of this contribution. It was not disclosed until the Amended 2014 October Quarterly Report filed February 1, 2016; and therefore, the missing 48-Hour Notice was not questioned in previous RFAs from RAD. Counsel further states that the Committee could not have been reasonably expected to file the 48-Hour Notice.
- 2) At RTB, the Commission cited a \$2,600 contribution from Gordon Austin received on August 7, 2014. In correspondence subsequent to the ROR, counsel states that at the time of the 48-Hour Notice reporting period, the Committee believed the contribution was received on August 6, 2014, prior to the 48-Hour Notice reporting period. It was not disclosed as received on August 7, 2014 until the Amended 2014 October Quarterly Report filed February 1, 2016. Given the Committee's reasonable belief at that time that a 48-Hour Notice was not required, the Reviewing Officer recommends this contribution be removed from the final violation.
- 3) At RTB, the Commission cited a \$1,000 contribution from George Anderson received on October 23, 2014. In correspondence subsequent to the ROR, counsel states that at the time of the 48-Hour Notice reporting period, the Committee believed the contribution was received on October 27, 2014. It timely filed the corresponding 48-Hour Notice on October 27, 2014. The contribution was not disclosed as received on October 23, 2014 until the Amended 2014 Post-General Report filed February 1, 2016. Given the Committee timely filed a 48-Hour Notice for the contribution as originally disclosed, the Reviewing Officer recommends this contribution be removed from the final violation.
- 4) At RTB, the Commission cited a \$2,000 contribution from Tom Rice for Congress received on October 27, 2014. In correspondence subsequent to the ROR, counsel states that at the time of the 48-Hour Notice reporting period, the Committee was unaware of this contribution. It was not disclosed until the Amended 2014 Post-General Report filed February 1, 2016; and therefore, the missing 48-Hour Notice was not questioned in previous Requests for Additional Information ("RFAs") from RAD. Counsel further states that the Committee could not have been reasonably expected to file the 48-Hour Notice.
- 5) At RTB, the Commission cited a \$1,600 contribution from Ivan Kasser received on October 30, 2014. In the original challenge, counsel states this contribution was received on October 17, 2014. The Reviewing Officer determined the cited contribution is disclosed on the Amended 2014 Post-General Report as a \$1,600

contribution from Mr. Ivan M. Kasser. McSally Tobin Victory Committee ("MTVC") received the original contribution on October 17, 2014. On October 30, 2014, the Committee received the corresponding transfer from MTVC. For purposes of the RTB finding, the Commission considered October 30, 2014 the receipt date. In the ROR, the Reviewing Officer concluded a 48-Hour Notice was required for this contribution but was not timely filed. In correspondence subsequent to the ROR, counsel agrees with the explanation contained in the ROR. The Reviewing Officer recommends this contribution be included in the final violation.

- 6) At RTB, the Commission cited a \$2,600 contribution from Kenneth Ellegard received on October 30, 2014. In the original challenge, counsel states this contribution was received on October 21, 2014. The Reviewing Officer determined the cited contribution is disclosed on the Amended 2014 Post-General Report as a \$2,600 contribution from Kenneth Ellegard. MTVC received the original contribution on October 21, 2014. On October 30, 2014, the Committee received the corresponding transfer from MTVC. For purposes of the RTB finding, the Commission considered October 30, 2014 the receipt date. In the ROR, the Reviewing Officer concluded a 48-Hour Notice was required for this contribution but was not timely filed. In correspondence subsequent to the ROR, counsel agrees with the explanation contained in the ROR. The Reviewing Officer recommends this contribution be included in the final violation.
- 7) At RTB, the Commission cited a \$2,600 contribution from Robert Tuttle received on October 30, 2014. In the original challenge, counsel states this contribution was received by MTVC on November 3, 2014 and did not require a 48-Hour Notice. After further review, audit documentation supports that MTVC received the original contribution on November 3, 2014, and the Committee received the corresponding transfer from MTVC on November 12, 2014.<sup>1</sup> In the ROR, the Reviewing Officer concluded a 48-Hour Notice was not required for this contribution. In correspondence subsequent to the ROR, counsel agrees with the explanation contained in the ROR. The Reviewing Officer recommends this contribution be removed from the final violation.
- 8) At RTB, the Commission cited a \$2,600 contribution from William Assenmacher received on October 30, 2014. In the original challenge, counsel states this contribution was received on September 14, 2013 and did not require a 48-Hour Notice. The Reviewing Officer determined the cited contribution is disclosed on the Amended 2014 Post-General Report as a \$2,600 contribution from Robert W. Assenmacher, which also aligns with supporting audit documentation.<sup>2</sup> MTVC received the original contribution on October 17, 2014. On October 30, 2014, the Committee received the corresponding transfer from MTVC. For purposes of the RTB finding, the Commission considered October 30, 2014 the receipt date. In the ROR, the Reviewing Officer concluded a 48-

<sup>1</sup> The contribution is not currently disclosed on any amended reports.

<sup>2</sup> The original 2014 Post-General Report and first amendment filed 12/5/2014 disclosed the contributor as Mr. William R. Assenmacher. The most recent amendment filed 2/1/2016 disclosed the contributor as Robert W. Assenmacher.

Hour Notice was required for this contribution but was not timely filed. In correspondence subsequent to the ROR, counsel agrees with the explanation but highlights that the contributor name listed at RTB is incorrect, and the violation is in connection with the \$2,600 contribution from Robert W. Assenmacher. As indicated in the ROR, the Reviewing Officer agrees. The Reviewing Officer recommends the contribution from Robert W. Assenmacher be included in the final violation.

- 9) At RTB, the Commission cited a \$1,000 contribution from James Stadler received October 31, 2014. In correspondence subsequent to the ROR, counsel states that the correct name of the contributor is Mrs. James Stadler, as disclosed on the Amended 2014 Post-General Report filed February 1, 2016. The Reviewing Officer agrees and recommends the contribution from Mrs. James Stadler be included in the final violation.

At the time of RTB, the Commission calculated the civil money penalty based on the Committee's failure to file 48-Hour Notices for 28 contributions totaling \$54,300. The Reviewing Officer recommends that 5 contributions totaling \$9,700 be removed from the calculation of the civil money penalty. See Attachment 2. The respondents failed to file a 48-Hour Notice for 23 contributions totaling \$44,600. See Attachment 3. The civil money penalty calculation for 48-Hour Notices is contained at 11 C.F.R. § 111.44. The calculation is \$142 plus 10% of the amount of the contributions not reported on *each* 48-Hour Notice, plus 25% for each previous violation. The number of missing notices should be calculated by determining the minimum number of notices the Committee could have filed to cover the contributions in question. The minimum number of 48-Hour Notices the Committee could have filed to cover the contributions in question equals 4. Thus, the amount of the civil money penalty should be  $[(\$142 \times 4 \text{ missing notices}) + (.10 \times \$44,600 \text{ in total contributions})]$  or \$5,028. Therefore, the Reviewing Officer recommends that the Commission make a final determination that the respondents violated 52 U.S.C. § 30104(a) and assess a \$5,028 civil money penalty, reduced from the RTB civil money penalty of \$6,282.

#### **OAR Recommendations**

1. Adopt the Reviewing Officer Recommendation for AF# 3373 involving McSally for Congress and Paul Kilgore, in his official capacity as Treasurer, in making the final determination;
2. Make a final determination in AF# 3373 that McSally for Congress and Paul Kilgore, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) and assess a \$5,028 civil money penalty (reduced from the RTB civil money penalty of \$6,282); and
3. Send the appropriate letter.

#### **Attachments**

Attachment 1 –

Attachment 2 – OAR Analysis of Contributions for Which a 48-Hour Notice Was Not Received

Attachment 3 – FD Chart of Contributions for Which a 48-Hour Notice Was Not Received

**OAR Analysis of Contributions for Which a 48-Hour Notice Was Not Received**

CONTRIBUTIONS AS INCLUDED IN THE FINDING			CONTRIBUTIONS AS DISCLOSED ON MOST RECENT AMENDMENTS			OAR RECOMMENDATION		
CONTRIBUTOR	RECEIPT DATE	AMOUNT	CONTRIBUTOR	RECEIPT DATE	AMOUNT	NOTES	ACTION	VIOLATION AMOUNT
LARRY TAYLOR	8/7/2014	\$1,000	Mr. Larry Taylor	8/7/2014	\$1,000		Include	\$1,000
ELEANOR FOX-	8/7/2014	\$2,600	Ms. Eleanor Fox	8/7/2014	\$2,600	Committee unaware of contribution and not disclosed until 2/1/16. Cited in separate enforcement matter.	Remove	
GORDON AUSTIN-	8/7/2014	\$1,500	Dr. Gordon T. Austin DMD PC	8/7/2014	\$1,500	Originally reported with 8/6/14 receipt date, prior to 48-Hour reporting period. Not disclosed with 8/7/14 receipt date until 2/1/16.	Remove	
BOB LEE-	8/14/2014	\$1,000	Mr. Bob Lee	8/14/2014	\$1,000		Include	\$1,000
LESTER STRONG-	8/14/2014	\$1,000	Mr. Lester D. Strong	8/13/2014	\$1,000		Include	\$1,000
NINA WADSWORTH-	8/14/2014	\$2,600	Mrs. Nina Wadsworth	8/14/2014	\$2,600		Include	\$2,600
PEABODY PAC	8/15/2014	\$2,500	Peabody Energy Corporation Political Action Committee (Peabody PAC)	8/15/2014	\$2,500		Include	\$2,500
JAMES DRETTLER-	8/17/2014	\$1,000	Mr. James P. Dretler	8/17/2014	\$1,000		Include	\$1,000
GEORGE ANDERSON-	10/23/2014	\$1,000	Mr. George E. Anderson	10/23/2014	\$1,000	Originally reported with 10/27/14 receipt date and 48-Hour Notice filed 10/27/14. Not disclosed with 10/23/14 receipt date until 2/1/16.	Remove	
TOM RICE FOR CONGRESS -	10/27/2014	\$2,000	Tom Rice For Congress	10/27/2014	\$2,000	Committee unaware of contribution and not disclosed until 2/1/16. Cited in separate enforcement matter.	Remove	
HAE PARK-	10/29/2014	\$2,600	Mr. Hae Park	10/29/2014	\$2,600		Include	\$2,600
SHARON CHENEVERT	10/30/2014	\$2,000	Mrs. Sharon L. Chenevert	10/27/2014	\$2,000	MTVC transfer 10/30/14.	Include	\$2,000
CHERYL ELLEGARD	10/30/2014	\$2,600	CHERYL ELLEGARD	10/21/2014	\$2,600	MTVC transfer 10/30/14.	Include	\$2,600
HEATHER VOLPE	10/30/2014	\$1,300	Mrs. Heather Volpe	10/22/2014	\$1,300	MTVC transfer 10/30/14.	Include	\$1,300



### **OAR Analysis of Contributions for Which a 48-Hour Notice Was Not Received**

CONTRIBUTIONS AS INCLUDED IN RTB FINDING			CONTRIBUTIONS AS DISCLOSED ON MOST RECENT AMENDMENTS			OARER RECOMMENDATION		
CONTRIBUTOR	RECEIPT DATE	AMOUNT	CONTRIBUTOR	RECEIPT DATE	AMOUNT	NOTES	ACTION	VIOLATION AMOUNT
IVAN KASSER	10/30/2014	\$1,600	Mr. Ivan M. Kasser	10/17/2014	\$1,600	MTVC transfer 10/30/14.	Include	\$1,600
TODD PIERCE	10/30/2014	\$2,600	Mr. Todd Pierce	10/25/2014	\$2,600	MTVC transfer 10/30/14.	Include	\$2,600
TIFFANI SPROUL	10/30/2014	\$1,300	TIFFANI SPROUL	10/27/2014	\$1,300	MTVC transfer 10/30/14.	Include	\$1,300
KENNETH ELLEGARD	10/30/2014	\$2,600	KENNETH ELLEGARD	10/21/2014	\$2,600	MTVC transfer 10/30/14.	Include	\$2,600
ROBERT TUTTLE	10/30/2014	\$2,600	NOT DISCLOSED			Contribution and MTVC transfer after 48-Hour reporting period.	Remove	
MIKE GOODMAN	10/30/2014	\$2,600	MIKE GOODMAN	10/25/2014	\$2,600	MTVC transfer 10/30/14.	Include	\$2,600
JON VOLPE	10/30/2014	\$1,300	Mr. Jon D. Volpe	10/22/2014	\$1,300	MTVC transfer 10/30/14.	Include	\$1,300
GORDON REAY	10/30/2014	\$1,000	Mr. Gordon M. Reay	10/27/2014	\$1,000	MTVC transfer 10/30/14.	Include	\$1,000
CHRISTINE TORETTI	10/30/2014	\$2,600	Ms. Christine J. Toretti	10/29/2014	\$2,600	MTVC transfer 10/30/14.	Include	\$2,600
WILLIAM ASSENMACHER	10/30/2014	\$2,600	Robert W. Assenmacher	10/17/2014	\$2,600	MTVC transfer 10/30/14. Contributor incorrectly reported as William Assenmacher in original report. Amended to disclose correct contributor name, Robert W. Assenmacher.	Include	\$2,600
JAMES MCDONNELL-	10/30/2014	\$2,600	Mr. James McDonnell III	10/30/2014	\$2,600		Include	\$2,600
JAMES STADLER-	10/31/2014	\$1,000	Mrs. James R. Stadler	10/31/2014	\$1,000	Contributor name corrected to be Mrs. James R. Stadler.	Include	\$1,000
ROBERT MERCER	10/31/2014	\$2,600	Mr. Robert L. Mercer	10/31/2014	\$2,600		Include	\$2,600
JAMES REMINGTON	10/31/2014	\$2,600	Mr. James Remington	10/31/2014	\$2,600		Include	\$2,600
RTB Violation Total		\$54,300				FD Violation Total		\$44,600

### **Final Determination Chart of Contributions for Which a 48-Hour Notice Was Not Received**

CONTRIBUTOR	CONTRIBUTION RECEIPT DATE	AMOUNT
Mr. Larry Taylor	8/7/2014	\$1,000
Mr. Bob Lee	8/14/2014	\$1,000
Mr. Lester D. Strong	8/13/2014	\$1,000
Mrs. Nina Wadsworth	8/14/2014	\$2,600
Peabody Energy Corporation Political Action Committee (Peabody PAC)	8/15/2014	\$2,500
Mr. James P. Dretler	8/17/2014	\$1,000
Mr. Hae Park	10/29/2014	\$2,600
Mrs. Sharon L. Chenevert	10/27/2014	\$2,000
Cheryl Ellegard	10/21/2014	\$2,600
Mrs. Heather Volpe	10/22/2014	\$1,300
Mr. Ivan M. Kasser	10/17/2014	\$1,600
Mr. Todd Pierce	10/25/2014	\$2,600
Tiffani Sproul	10/27/2014	\$1,300
Kenneth Ellegard	10/21/2014	\$2,600
Mike Goodman	10/25/2014	\$2,600
Mr. Jon D. Volpe	10/22/2014	\$1,300
Mr. Gordon M. Reay	10/27/2014	\$1,000
Ms. Christine J. Toretta	10/29/2014	\$2,600
Robert W. Assenmacher	10/17/2014	\$2,600
Mr. James McDonnell III	10/30/2014	\$2,600
Mrs. James R. Stadler	10/31/2014	\$1,000
Mr. Robert L. Mercer	10/31/2014	\$2,600
Mr. James Remington	10/31/2014	\$2,600
Final Determination Violation Amount		\$44,600

**Recommended FD Civil Money Penalty: \$5,028**

**[( \$142 x 4 missing notices) + (.10 x \$44,600 in total contributions)]**

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) AF 3373  
Final Determination Recommendation - )  
McSally for Congress and Paul Kilgore, )  
in his official capacity as Treasurer )  
(C00512236) )

CERTIFICATION

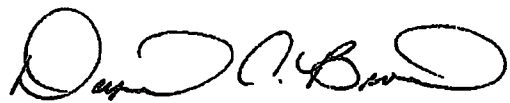
I, Dayna C. Brown, Secretary and Clerk of the Federal Election  
Commission, do hereby certify that on February 08, 2019, the Commission  
decided by a vote of 4-0 to take the following actions in AF 3373:

1. Adopt the Reviewing Officer Recommendation for AF# 3373  
involving McSally for Congress and Paul Kilgore, in his official  
capacity as Treasurer, in making the final determination.
2. Make a final determination in AF# 3373 that McSally for Congress  
and Paul Kilgore, in his official capacity as Treasurer, violated 52  
U.S.C. § 30104(a) and assess a \$5,028 civil money penalty (reduced  
from the RTB civil money penalty of \$6,282).
3. Send the appropriate letter.

Commissioners Hunter, Petersen, Walther, and Weintraub voted  
affirmatively for the decision.

Attest:

February 8, 2019  
Date

  
Dayna C. Brown  
Secretary and Clerk of the Commission



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 11, 2019

James E. Tyrrell III  
Venable LLP  
600 Massachusetts Ave., NW  
Washington, DC 20001

McSally for Congress  
C00512236  
AF#: 3373

Dear Mr. Tyrrell:

On June 18, 2018, the Commission found reason to believe ("RTB") that McSally for Congress and Paul Kilgore, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a) for failing to timely file 48-Hour Notices for 28 contributions totaling \$54,300. By letter dated June 18, 2018, the Commission sent notification of the RTB finding that included a civil money penalty calculated at RTB of \$6,282 in accordance with the schedule of penalties at 11 C.F.R. § 111.44. On July 26, 2018, the Office of Administrative Review received your written response challenging the RTB finding.

The Reviewing Officer reviewed the Commission's RTB finding with its supporting documentation and your written response. Based on this review, the Reviewing Officer recommended that the Commission reduce the RTB civil money penalty, make a final determination that McSally for Congress and Paul Kilgore, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a), and assess a civil money penalty in the amount of \$6,022 in accordance with 11 C.F.R. § 111.44. The Reviewing Officer Recommendation was sent to you on August 30, 2018.

The Reviewing Officer reviewed your subsequent response to the Reviewing Officer Recommendation. Based on this review, the Reviewing Officer recommended that the Commission reduce the RTB civil money penalty, make a final determination that McSally for Congress and Paul Kilgore, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a), and assess a civil money penalty in the amount of \$5,028 in accordance with 11 C.F.R. § 111.44.

On February 8, 2019, the Commission adopted the Reviewing Officer's recommendation and made a final determination that McSally for Congress and Paul Kilgore, in his official capacity as Treasurer, violated 52 U.S.C. § 30104(a), and assessed a civil money penalty in the amount of \$5,028 (reduced from the RTB civil money penalty of \$6,282). A copy of the Final Determination Recommendation is attached.

At this juncture, the following courses of action are available to you:

**1. If You Choose to Appeal the Final Determination and/or Civil Money Penalty**

If you choose to appeal the final determination, you should submit a written petition, within 30 days of receipt of this letter, to the U.S. District Court for the district in which the committee or you reside, or transact business, requesting that the final determination be modified or set aside. See 52 U.S.C. § 30109(a)(4)(C)(iii). Your failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondents' right to present such argument in a petition to the district court under 52 U.S.C. § 30109. 11 CFR § 111.38.

**2. If You Choose Not to Pay the Civil Money Penalty and Not to Appeal**

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA") as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 *et seq.* If you do not pay this debt within 30 days (or file a written petition to a federal district court - see below), the Commission will transfer the debt to the U.S. Department of the Treasury ("Treasury") for collection. Within 5 days of the transfer to Treasury, Treasury will contact you to request payment. Treasury currently charges a fee of 30% of the civil money penalty amount for its collection services. If the age of the debt is greater than or equal to two years old, Treasury will charge a fee of 32% of the civil money penalty amount for its collection services. The fee will be added to the amount of the civil money penalty that you owe. Should Treasury's attempts fail, Treasury will refer the debt to a private collection agency ("PCA"). If the debt remains unpaid, Treasury may recommend that the Commission refer the matter to the Department of Justice for litigation.

Actions which may be taken to enforce recovery of a delinquent debt by Treasury may also include: (1) offset of any payments, which the debtor is due, including tax refunds and salary; (2) referral of the debt to agency counsel for litigation; (3) reporting of the debt to a credit bureau; (4) administrative wage garnishment; and (5) reporting of the debt, if discharged, to the IRS as potential taxable income. In addition, under the provisions of DCIA and other statutes applicable to the FEC, the debtor may be subject to the assessment of other statutory interest, penalties, and administrative costs.

In accordance with the DCIA, at your request, the agency will offer you the opportunity to inspect and copy records relating to the debt, the opportunity for a review of the debt, and the opportunity to enter into a written repayment agreement.

**3. If You Choose to Pay the Civil Money Penalty**

If you should decide to pay the civil money penalty, follow the payment instructions on page 4 of this letter. You should make payment within thirty (30) days of receipt of this letter.

## **NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS**

### **4. Partial Payments**

If you make a payment in an amount less than the civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assessed upon making a final determination.


### **5. Settlement Offers**

Any offer to settle or compromise a debt owed to the Commission, including a payment in an amount less than the civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assessed upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

The confidentiality provisions at 52 U.S.C. § 30109(a)(12) no longer apply and this matter is now public. Pursuant to 11 C.F.R. §§ 111.42(b) and 111.20(c), the file will be placed on the public record within 30 days from the date of this notification.

If you have any questions regarding the payment of the civil money penalty, please contact Rhiannon Magruder on our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,

  
Ellen L. Weintraub  
Chair

-----  
**ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS**

In accordance with the schedule of penalties at 11 C.F.R. § 111.44, the civil money penalty is \$5,028 for the 48-Hour Notices.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit [www.fec.gov/af/pay.shtml](http://www.fec.gov/af/pay.shtml) to be directed to Pay.gov's Administrative Fine Program Payment form.

This penalty may also be paid by check or money order made payable to the Federal Election Commission. It should be sent by mail to:

Federal Election Commission  
PO Box 979058  
St. Louis, MO 63197-9000

If you choose to send your payment by courier or overnight delivery, please send to:

U.S. Bank - Government Lockbox  
FEC #979058  
1005 Convention Plaza  
Attn: Government Lockbox, SL-MO-C2GL  
St. Louis, MO 63101

**PAYMENTS BY PERSONAL CHECK**

Personal checks will be converted into electronic funds transfers (EFTs). Your account will be electronically debited for the amount on the check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

**PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT**  
-----

FOR: McSally for Congress

FEC ID#: C00512236

AF#: 3373

PAYMENT AMOUNT DUE: \$5,028

**TOP SECRET**